

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

R. Wayne Johnson,

Civ. No. 22-0304 (WMW/BRT)

Plaintiff,

v.

ORDER

Sarah Pfieffer; Amy Draeger; T.S.
Barnetto; and Amy Pletscher, Judge,

Defendants.

This Court previously recommended the dismissal of this action without prejudice due to Plaintiff R. Wayne Johnson’s failure to pay the filing fee for apply for *in forma pauperis* (“IFP”) status within the deadline established by the Clerk of Court. (*See* Doc. No. 6.) Johnson has subsequently applied for IFP status, making moot the basis for this Court’s recommendation of dismissal. Accordingly, the Report and Recommendation of February 22, 2022, will be vacated.

That said, as this Court noted in the Report and Recommendation, “Johnson is a prolific litigant nationwide—so much so that he has for many years been ineligible to proceed IFP in federal court due to the operation of 28 U.S.C. § 1915(g).” (Doc. No. 6 at 1 n.1) (citing *Johnson v. United States Postal Service*, No. CIV-20-350-D, 2020 WL 3027675, at *1 (W.D. Okla. June 5, 2020) (collecting cases)). Johnson indubitably “has, on 3 or more prior occasions, while incarcerated or detained in any facility, brought an action or appeal in a court of the United States that was dismissed on the grounds that it is

frivolous, malicious, or fails to state a claim upon which relief may be granted.” 28 U.S.C. § 1915(g). The complaint filed by Johnson in this matter does not establish that he “is under imminent danger of serious physical injury.” *Id.* Accordingly, he may not proceed IFP, and his IFP application is denied pursuant to § 1915(g).

Johnson may proceed as a non-IFP litigant by submitting the \$402.00 filing fee for this action within 14 days of the date of this order. Failure to do so will result in a second recommendation that this matter be dismissed without prejudice for failure to prosecute. *See* Fed. R. Civ. P. 41(b).

ORDER

Based on the foregoing, and on all of the files, records, and proceedings herein, **IT IS HEREBY ORDERED** that:

1. The February 22, 2022 Report and Recommendation (Doc. No. 6) is **VACATED**.
2. Plaintiff R. Wayne Johnson’s application to proceed *in forma pauperis* (Doc. No. 8) is **DENIED**.
3. Johnson must pay the \$402.00 filing fee within 14 days of the date of this order, failing which it will be recommended that this matter be dismissed without prejudice for failure to prosecute.

Dated: May 5, 2022

s/ Becky R. Thorson
BECKY R. THORSON
United States Magistrate Judge